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JUL 08 2021

Clark County Superior Court 21 2 04264 06  
Case \_\_\_\_\_  
Spencer, Clerk Clark Co.

Nathen Barton,

Plaintiff,

vs.

American Protection Plans LLC

Defendant

PLAINTIFF'S  
ORIGINAL COMPLAINT AND  
INJUNCTIVE RELIEF  
AND DEMAND FOR JURY TRIAL**I. BASIS FOR JURISDICTION**

Plaintiff Nathen Barton is a natural person and resident of Clark County, Washington. All the acts alleged in this complaint occurred in Clark County, Washington State, during the year 2021.

Jurisdiction in this court is correct because of where Plaintiff resides. and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the Defendant.

**II. STATEMENT OF CLAIM**

On July 9, 2020, Plaintiff registered and paid for a Washington State (360) telephone area code cellular number to be primarily used by his minor child. It is a Protected Computer as it is used in a manner that affects interstate or foreign commerce or communication. The phone was on a very limited service plan, with each call, text, or data usage subtracting from a fixed amount of each available each month.

This (360) XXX XXXX number was registered on the FTC *do-not-call* registry more than 31 days before May 7, 2021, and all the telemarketing phone calls alleged in this complaint were made to this 360-area code number.

Plaintiff's Original Complaint for a Civil Case & Injunctive Relief Page 1 / 6

**Unsolicited Telemarketing Call #4**

At or about 4:37pm on May 18, 2021, Plaintiff received a phone call, seemingly from 855 805 7351, and the caller introduced herself with "Hi, good evening this is Irina with American Residential Warranty". She went on to encourage Plaintiff to purchase a home warranty from ARW. At 36 seconds into the call, Plaintiff expressed that he did not want a home warranty. The caller continued the call another 45 seconds.

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**Unsolicited Telemarketing Call #5**

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At or about 11:47pm on May 20, 2021, Plaintiff received a phone call, seemingly from 855 416 7574, a number known to be used by ARW. Plaintiff believes the intent of this call was to encourage Plaintiff to purchase a home warranty from ARW.

**Unsolicited Telemarketing Call #5**

At or about 4:18pm on May 27, 2021, Plaintiff received a phone call, seemingly from 855 805 7351, and the caller introduced herself with "Hi, this Brenden calling with American Residential Warranty". He went on to encourage Plaintiff to purchase a home warranty from ARW.

**Commercial Telephone Solicitors**

RCW 19.158.050(1) mandates that:

"In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing."

Although RCW 19.158.050(3) says "The department of licensing shall issue a registration number to the commercial telephone solicitor.", in practice this Commercial Telephone Solicitor "registration number" appears as an endorsement on the business license issued by The Washington State Department of Revenue.

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1 APP does not have this endorsement on their business license, and they and their agents act  
2 as unlicensed commercial telephone solicitors.

3 **These calls are annoying**

4 These messages are obnoxious and an invasion of privacy. Plaintiff specifically registered  
5 the phone number on the FTC do-not-call list to not have the phone ringing with unwanted sales  
6 pitches. These five phone calls were initiated by APP to encourage Plaintiff to purchase goods  
7 or services.

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8 **III. RELIEF**

9 **Federal Claims**

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10 Defendants violated the TCPA 47 U.S.C. 227(c)(5) by soliciting Plaintiff five (5) times  
11 without his consent on his cell phone with phone number (360) XXX XXXX while he was  
12 registered on the FTC do-not-call list.

13 **Washington State Claims**

14 APP and their agents who spoke to Plaintiff were not registered as Commercial Telephone  
15 Solicitors with the Washington State Department of Licensing when any of the solicitation calls  
16 were placed to Plaintiff, in violation of RCW 19.158.050(1) each time they called, for a total of  
17 five (5) times.

18 Washington State RCW 19.158.110(1) says:

19 Within the first minute of the telephone call, a commercial telephone solicitor or  
20 salesperson shall:

- 21 (a) Identify himself or herself, the company on whose behalf the solicitation is being  
22 made, the property, goods, or services being sold; and  
23 (b) Terminate the telephone call within ten seconds if the purchaser indicates he or  
24 she does not wish to continue the conversation.



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1 Defendants violated Washington State RCW 19.158.110(1)(b) two (2) times by not  
2 terminating the telephone call within ten seconds of Plaintiff indicating he did not wish to  
3 continue the conversation.

4 Defendants violated Washington State RCW 19.158.150 five (5) times by soliciting  
5 Plaintiff on his cell phone while they were not registered on with the Washington State  
6 Department of Licensing as Commercial Telephone Solicitors, or while working on behalf of an  
7 unregistered Commercial Telephone Solicitor.

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**Treble Damages**

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8 Plaintiff believes the record shows that Defendants' violations of the law were willful or  
9 knowing. Therefore, Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5) and  
10 Washington State RCW 19.158.030.  
11

**Injunctive Relief**

12 TCPA 47 U.S.C. 227(c)(5)(A) allows "an action based on a violation of the regulations  
13 prescribed under this subsection to enjoin such violation,"  
14

15 Plaintiff asks this Court to enjoin the APP from calling phone numbers on the FTC *do-not-*  
16 *call* list without consent.

**All Possible Damages**

17 Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive,  
18 that he might be entitled to. Examples might be, but are not limited to, court costs, attorney fees,  
19 pre-judgement interest, and post-judgement interest.  
20

21 I declare under penalty of perjury under the laws of the state of Washington that the  
22 foregoing is true and correct.  
23

21 2 0 1 2 6 4 0 6

1. Signed at Vancouver, WA on 7/8/2021

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4. (Nathen Barton)  
5. JUL 08 2021

6. Nathen Barton  
7. (718) 710-5784  
8. 4618 NW 11<sup>th</sup> Cir  
9. Camas WA 98607

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